

Before the
Federal Communications Commission

Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations,
(Rosendale, New York)

) MM Docket No. 93-17

)

) RM-8170

)

)

)

To: The Commission

RECEIVED
MAY 20 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
DOCKET FILE COPY ORIGINAL

REPLY TO STATEMENT IN SUPPORT OF APPLICATION FOR REVIEW

Aritaur Communications, Inc. ("Aritaur"), by and through counsel, and pursuant to §1.45 of the Commission's Rules (47 C.F.R. §1.45), hereby submits its Reply to the "Statement in Support of Application for Review" ("Statement") filed by WMHT Educational Telecommunications ("WMHT") in the above-captioned rulemaking proceeding.¹ In support whereof, the following is shown:

On April 23, 1996, State University of New York ("SUNY") filed an Application for Review of the Policy and Rules Division's Memorandum Opinion and Order, DA 96-376, released March 28, 1996, ("MO&O"), in the above-captioned proceeding.² The MO&O allotted Channel 273A to Rosendale, New York, and opened a window for the filing of applications. Ten parties, including

¹ This Reply is timely-filed within five days of the filing of WMHT's Statement (including three additional days for mailing time and not counting "holidays") or by May 20, 1996.

² Aritaur filed an Opposition to SUNY's Application for Review on May 8, 1996.

Aritaur, have filed applications for construction permit to operate of the Channel. SUNY's Application for Review seeks reversal of the MO&O. On May 8, 1996, WMHT filed its Statement wherein it echoed some of the arguments raised by SUNY in its Application for Review. WMHT's Statement is frivolous, procedurally defective and should be given no consideration.

Section 1.115 of the Commission's Rules governs the filing of Applications for Review. Section 1.115(d) provides that oppositions may be filed and that replies to those oppositions may also be filed. The Commission's Rules do not provide for the filing of a "Statement in Support of Application for Review." WMHT's Statement is substantively an Application for Review which should have been filed within 30 days of the release of the MO&O on March 28, 1996, or by April 29, 1996 (April 27, 1996 and April 28, 1996, were "holidays" under the Commission's Rules). WMHT's Statement was filed on May 8, 1996, and was filed too late to be treated as an Application for Review.

In addition, WMHT's Statement fails to provide a reason for the Commission to review the PRD's MO&O. WMHT merely echoes some of the arguments raised by SUNY in its Application for Review. As Aritaur has shown, SUNY failed to demonstrate any error in the PRD's MO&O. The PRD's action was supported by precedent and allotment of Channel 273A to Rosendale will serve the public interest. There are ten parties who desire an opportunity to serve Rosendale. WMHT's pleading should not be considered further.

WHEREFORE, the above-premises considered, Aritaur Communications, Inc. respectfully requests that the Statement in Support of Application for Review filed by WHMT Educational Telecommunications be **DISMISSED WITHOUT CONSIDERATION**.

Respectfully submitted,

ARITAU COMMUNICATIONS, INC.



By: _____
Gary S. Smithwick
Shaun A. Maher

Its Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, DC 20036
(202) 785-2800

May 20, 1996

d:\rosenda\reply.516

CERTIFICATE OF SERVICE

I, Denise Lynn Felice, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 20th day of May, 1996, copies of the foregoing were sent by first class mail, postage prepaid, to the following:

Mr. John A. Karousos (*)
Chief, Allocations Branch
Policy & Rules Division
Mass Media Bureau
Federal Communications
Commission
2000 M Street, N.W., 5th Floor
Washington, DC 20554

Todd D. Gray, Esquire
Margaret L. Miller, Esquire
Dow, Lohnes & Albertson
1255 23rd Street, N.W., Suite 500
Washington, D.C. 20037
**Counsel for State University
of New York**

Mark N. Lipp, Esquire
Mullin, Rhyne, Emmons
& Topel, P.C.
1225 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036-5383
**Counsel for Sacred Heart
University, Inc.**

Allan G. Moskowitz, Esquire
Kaye, Scholer, Fierman, Hays
& Handler
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005
**Counsel for
Span Communications Corp.**

Mr. Dennis Jackson
Radio Rosendale
19 Boas Lane
Wilton, Connecticut 06897

Lauren A. Colby, Esquire
Attorney at Law
Post Office Box 113
Frederick, MD 21705
Counsel for Eric P. Straus

Erwin G. Krasnow, Esquire
Verner, Liipfert, Bernard,
McPherson & Hand
901 15th Street, N.W.
Washington, D.C. 20005
**Counsel for David M. Fleisher
and Melissa M. Krantz**

Jerold L. Jacobs, Esquire
Rosenman & Colin, L.L.P.
1300 19th Street, N.W.
Washington, D.C. 20036
Counsel for
Hawkeye Communications, Inc.

Gregory L. Masters, Esquire
Fisher, Wayland, Cooper,
Leader & Zaragoza
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006
**Counsel for
Rosen Broadcasting, Inc.**

Barry A. Friedman, Esquire
Thompson, Hine & Flory
1920 N Street, N.W.
Washington, D.C. 20036
Counsel for Marist College

Steven C. Schaffer, Esquire
Schwartz, Woods & Miller
Suite 300, The Dupont Circle Building
1350 Connecticut Avenue, N.W.
Washington, DC 20036
Counsel for WHMT Educational Telecommunications

(*): By Hand Delivery


Denise Lynn Felice